IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION No.2294 of 2007.

Nivrutti Madhavrao Chavan ..Applicant.

Vs.

The State of Maharashtra ..Respondent.

Mr A.P. Mundargi, Senior Advocate i/b Y. N. Shingnapurkar, Advocate for applicant.

Ms M. H. Mhatre, APP for the State.

CORAM: V.C. DAGA,J.
DATED: 1st August,2007.

P.C.:-

1. Heard Mr Mundargi, learned Senior counsel for the applicant and APP for the State.

2. Perused application and the material available on record.

3. This application is moved under Section 438 of the Cr.P.C. to seek anticipatory bail in C.R. No.76 of 2007 registered with Niphad Police Station for the offence punishable under Sections 408, 409, 465, 467, 468, 471, 474, 420, 422, 120 (B) 201, and Section 34 of the I.P.C.

THE FACTS :
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4. The factual matrix reveal that a complaint came to be filed on 5.7.2007 against the employees of "Niphad Sahakari Sakhar Karkhana" (for short " the sugar factory") registered under the Co-operative Societies Act alleging criminal breach of trust, forgery of a valuable security for the purpose of cheating together with criminal conspiracy as contemplated under Section 120-B read with Section 34 of the I.P.C.

5. The facts further reveal that the applicant was holding the post of the Executive Director in the said sugar factory during the period 6.1.2003 to 31.5.2005. He had full authority over the domain of the sugar factory. Thus, he was responsible to look after day to day functioning of the sugar factory and was entitled to supervise financial matters and exercise control over all the Heads of the various Departments. He was also responsible for making planning as per policy of the Government and was to keep control over the employees and exercise full financial control over the working of the factory.

6. The Sugar factory during the above

period sold sugar to one "M/s Ashapura Sugar" who was dealing in the sugar stocks of the factory. Said firm issued 95 cheques worth more than Rs. 10 crores towards purchase consideration which came to be dishonoured. None of the employees of the factory including the applicant took any steps to recover the said amount from the "M/s Ashapura Sugar" but suppressed the facts leading to non-encashment of cheques and swept subject transactions under the carpet and thereby caused financial loss to the sugar factory worth more than ten crores.

SUBMISSIONS:

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7. Mr Mundargi, learned Senior Counsel appearing for the applicant took me through the various documents and the statements recorded during the course of investigation and urged that the present applicant is innocent and that his involvement can hardly be seen. According to Mr Mundargi,the present applicant was not aware of the cheques which were dishonoured. That the applicant was not expected to exercise day to day control and as such he has been wrongly implicated by the State. He, thus, submits that the applicant is entitled for anticipatory bail.

8. The learned APP opposed the application contending that the applicant being the Executive Director, it was his responsibility to exercise day to day control over the affairs of the sugar factory. In his submission amount of rupees ten crores was not a small amount which would escape from his knowledge. In his submission, all the accused persons, including the applicant, were party in commission of the offences and have deliberately caused huge loss to the sugar factory. He, thus, submits that in order to trace out the exact nature of transaction, nature of involvement of each accused; the mode and manner in which the offences are committed, it is necessary to have custodial investigation. He, thus, prayed for rejection of application for bail.

CONSIDERATION:

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9. Having heard rival parties, it is not in dispute that the present sugar factory is governed by the provisions of the Multi-State Co-operative Societies Act, 2002 ("the said Act" for short). Section 51 of the said Act contemplates appointment of a full-time

employee of such multi-State co-operative society. A person appointed as the Chief Executive Officer becomes a member of the board and of the Executive Committee and such other committees or sub-committees as may be constituted under sub-section (1) of Section 53. Section 53 of the said Act contemplates constitution of an Executive Committee and other committees or sub-committees, as may be considered necessary, by the Board and those committees are expected to perform such functions, as are assigned to it, in accordance with the bye-laws of the multi-State co-operative society.

10. As against aforesaid, the Section 52 of the said Act deals with the powers and functions of the Chief Executive Officer, which reads as under:

Section 52:-

> "(a) day-to-day management of the business of the multi-State co-operative society;
>
> (b) operating the accounts of the multi-State co-operative society and be responsible for making arrangements for safe custody of cash;
>
> (c) signing on the documents for and on behalf of the multi-State co-operative society;

(d) making arrangements for the proper maintenance of various books and records of the multi-State co-operative society and for the correct preparation, timely submission of periodical statements and returns in accordance with the provisions of this Act, the rules and the bye-laws;

(e) convening meetings of the general body of the multi-State co-operative society, the board and the Executive Committee and other committees or sub-committees constituted under sub-section (1) of Section 53 and maintaining proper records for such meetings;

(f) making appointments to the posts in the multi-State co-operative society in accordance with the bye-laws;

(g) assisting the board in the formulation of policies, objectives and planning;

(h) furnishing to the board periodical information necessary for appraising the operations and functions of the multi-State co-operative society;

(i) appoint the person to sue or be sued on behalf of the multi-State co-operative society;

(j) present the draft annual report and financial statement for the approval of the board within thirty days of closure of the financial year;

(k) performing such other duties, and exercising such other powers, as may be specified in the bye-laws of the multi-State co-operative society."

11. The perusal of the aforesaid Section would unequivocally goes to show that the Chief Executive Officer exercises powers and

discharge the functions specified in Section 52 above.

12. Day to day management of the society is entrusted to him. He is responsible for business, operation of the accounts and for making arrangements for safe custody of cash. He is also responsible to make periodical statement and returns. He has to present draft of annual report and financial statement for the approval of the board and perform such other duties as per the bye-laws of the said society.

13. At this juncture, it will be relevant to notice bye law no.12 which did cast an obligation on the applicant to draw Bills of Exchange, cheques, demand drafts and sign the same. It is thus clear that day to day banking transactions were required to be undertaken by the applicant as a Chief Executive Officer/Executive Director of the society. For that purpose credit and debit balance prevailing in the various bank account of society may have been monitored by the applicant.

14. In the teeth of the aforesaid duties and

responsibilities and facts and circumstances of the case, the applicant cannot be heard of saying that he was unaware of the subject transactions involving a stake of more than rupees 10 crores. The amount misappropriated is not a small. Its impact on the financial health of the society could not have escaped attention of the applicant. It is not a simple case of negligence. It is, therefore, necessary for the investigating agency to thoroughly investigate the complaint in question.

15. The allegation of corruption have also surfaced during the course of investigation. Investigation is still incomplete. Considering the involvement of the crores of rupees and prima facie role played by the applicant, I do not think this is a fit case for grant of anticipatory bail.

16. At this juncture, it would be relevant to refer to the observations made by the Apex Court in the case of **Narinderjit Singh Sahni vs. Union of India, Bombay Criminal Cases, 2002, Vol.I, page 1 (Supreme Court)** reading as under:-

"Criminal Procedure Code, 1973, Section 438 - Constitution of India, Article 32-Anticipatory Bail- Accused alleged to be guilty of many offences of cheating, corruption, misappropriation of public funds etc. By complainant infraction of his right under Article 21, accused praying Supreme Court for anticipatory bail. Held that grant of anticipatory bail would amount to misplaced sympathy on such white collared accused persons whose acts of commission and omission ruined vast majority of poor citizens of this country."

(Emphasis supplied)

17. The above observations were rightly relied upon by the learned Ad hoc Additional Sessions Judge-I, Niphad in its order dated 11.7.2007, while rejecting bail application of the applicant alongwith others. I concur with the view taken.

18. In the above view of the matter, for the reasons recorded hereinabove as well as by the Sessions Court with which I concur, the application stands rejected.

(V.C. DAGA,J.)